

CHILD SUPPORT IN CALIFORNIA

This sheet is designed to provide basic information about child support. Specific questions and requests for help with a particular case should be presented to your local support enforcement office (647-7742), your own attorney, or the Presidio of Monterey Legal Assistance Office (242-5084). An excellent, free resource for information, workshops, child support calculations, and assistance in completion of court forms is the County Family Law Facilitator. Call 755-5167 for details.

The general rule is that all children, including those whose parents were never married to each other, have a legal right to be supported by both parents. The amount of support is based on the incomes of the parents and the needs of the children. Support will be paid to the one with actual custody of the children, usually a parent, or to a public agency where welfare assistance is being paid. Unless welfare is paid, the parents are free to settle the case on their own, and are not required to use a county enforcement agency. However, any agreements should be put into the form of a court order to protect both parties in the event of a later disagreement. The time and expense of a court order are well spent if there is a dispute later.

Can I handle a child support case on my own?

Yes and there are some very good self-help books on how to do your own divorce and how to get and enforce child support orders that can provide meaningful information. However, most people should retain the services of a private attorney or let the matter be handled by the local child support enforcement agency, a "IV-D" agency, in California, the County District Attorney. In Monterey County that agency can be reached by phone at 647-7732, by mail at P.O. Box 2059, Salinas, CA 93902, and visited at 752 La Guardia near the Salinas airport.

How much is the support going to be?

Child support in California is set by an algebraic formula established by the Legislature. The basic factors in setting child support are the parties' gross incomes and the amount of time each parent spends taking care of the children. Other factors will have a varying impact on the level of support. Union dues, mandatory retirement payments, child support paid for other children, etc. will move the guideline support level slightly. If a parent has other natural or adopted children (step-children do not count) in the home, the formula provides for a "hardship" deduction. This adjustment to the obligated parent's (obligor's) income is equal to the amount of support set. NOTE: No "hardship" deduction for other children in the home is available if public assistance (welfare) is being paid. All hardship adjustments to the formula are within the discretion of the court. Your attorney or the Family Law Facilitator should have the software to run the numbers for you.

Examples:

E-4 w/3 years, 1 child, other parent has minimum wage job:
20% visitation (every other weekend, 3 weeks in the summer);
Guideline support about \$240/month.
Without visitation, about \$310/month.
Plus ½ of work-related day care.

O-4 w/8 years, 2 kids, 20% visitation,
Other parent not working: \$1030;
Other parent earning \$1500/month: \$890 + ½ work-related day care

Other standard terms of a child support order are: A wage assignment order will issue; each parent will provide health insurance for the children if available through employment at reasonable cost. The parties will divide equally any unreimbursed health care costs. Both parties must notify the enforcing agency of any change of residence or employment.

What do I have to do to collect child support?

To get a court order requiring another person to pay child support, you must prove that the other person is a parent of the child and present financial information that will enable the court to make a legally proper support order.

Can I get help with my child support case?

Yes. The local "IV-D" agency can handle all aspects of a child support case. In California, child support cases are handled by the District Attorney of the county in which you live. In California, these cases are handled at no charge

to the custodial parent; however, in some other states, there may be a nominal charge of up to \$25 for support enforcement services.

What information should I take to my lawyer or to the District Attorney?

Required information may include the full legal name, date of birth, Social Security Number, physical description, address, and employer of the non-custodial parent; full names and dates of birth of all children; marriage license, if there is one; divorce or separation agreement or judgment, if there is one; information about income and assets of the non-custodial parent; evidence of your own financial condition, such as pay check stubs; and evidence of any special educational or medical needs of the children.

What can I do if the other parent will not pay?

Courts can issue earnings assignment orders which require the other parent's employer to withhold child support from the other parent's pay.

What if I am unsure of which person is the father of the children?

Parentage blood testing has reached a point where it is highly reliable and the test results can be used in court to determine parentage.

I have a newborn baby. They're not going to stick her with a needle, are they?

Most paternity testing labs are equipped to do "buccal swabs": a Q-tip rolled on the inside of the cheek to collect cells. This method is scientifically accepted and avoids the requirement for needles for infants and persons with religious objections. The process is somewhat more complicated to process, so it is not used unless necessary.

What if I do not know where the other parent is?

Local support enforcement agencies, such as the District Attorney, have access to a wide range of services that can be used to locate non-custodial parents.

What if I do not have much information about the other parent?

Provide such information as you have. The local support enforcement agency will use its resources to help with the identification and location of the other parent.

What if I have been wrongly named as a parent of a child?

You can always seek the services of an attorney to represent you in the matter. Since disputes about parentage are usually resolved by blood tests, you may try to work out arrangements for the tests on your own. If the County is trying to establish paternity, DNA blood testing should be available at reasonable rates. Because of volume discounts, County blood tests usually cost about \$250, and the defendant only pays if he is found to be the father. Results should be available within 3 weeks of the blood testing. In a recent survey of child support enforcement agencies in California, about 30% of the DNA tests were proving that the wrong father had been sued.

What if I think the amount of child support should be changed?

If your financial circumstances, the financial condition of the other parent, or the needs of the children have changed, the amount of child support may be modified. You can file a motion for modification with the court that issued the support order or you can ask the local support enforcement agency to conduct a review of the support amounts. California courts now have an Office of the Family Court Facilitator, which has court staff who can assist you with filling out the paperwork to get a modification.

How long will it take to get child support?

This, of course, depends on how complicated the case is. If the parties are able to agree, the matter may be resolved in a very short period of time. On the other hand, if the whereabouts of the other parent are unknown or if parentage is disputed, resolution of the case can take a substantial period of time.

Are efforts to get child support always successful?

Unfortunately, they are not. In some cases, the other parent can not be identified or located. In others, such as where the non-custodial parent is in prison, the other parent has no ability to provide the needed support.

What if the other parent makes threats after I try to get child support?

Threats should be reported to your attorney, the child support enforcement agency handling your case, or, if appropriate, to the police department.

What if the other parent has a new family?

The existence of another family may affect the amount of money available for child support. However, it does not eliminate the obligation to provide support for other children.

The "Obligor" parent has been injured on the job. Can I still get support?

The enforcing agency can file a lien against workers' compensation benefits, and can intercept up to 25% of disability payments. Tell the District Attorney what you know about the job, the injury, etc. If the Obligor gets a lump-sum settlement of the case, the DA may be able to get a portion of that sum to pay back support.

The Obligor parent says he's going to file bankruptcy. Will I lose my rights to the back support owed?

No, child support is not discharged in bankruptcy. The enforcement agency needs to know that he's filed so they can file a claim.

The other parent won't let me see the child/I don't know where they are.

Your local District Attorney Child Abduction Unit (CAU) will assist you in locating your family and in getting you visitation or custody orders. Interference with visitation IS NOT a defense to failure to pay. If you know where to make the payments, continue and seek help from the CAU.

I've just been served papers naming me as the father of a child. What do I do?

First, and most importantly, seek legal advice promptly. You have less than 30 days to file an answer or otherwise respond to the suit, and if no answer is filed, a judgment can be entered against you. You can file an answer yourself, get advice from the Legal Assistance Office, go to the Family Law Facilitator at the County Courthouse (755-5167), or seek a private attorney. Private attorneys can be expensive (up to \$2000 to walk you through paternity testing, 2 or 3 court appearances, setting support if necessary). However, when compared to the expense of a child support order, the amount spent on dealing with the case properly from the outset is minimal. A \$500/month child support order is worth over \$110,000 before the child becomes an adult. You may have an attorney file the answer, or you can do this yourself (you should have received a blank "Answer to governmental Complaint" or "Answer" when you were served). You will have to pay a filing fee (in California, about \$195.00) or obtain a waiver of those fees if you cannot afford the fee. Do Not ignore the complaint, even if the mother tells you its been taken care of. Do not assume that mistakes will be corrected by the other parent or the governmental agency. After a judgment is entered naming you as the father of a child, your ability to set aside that judgment is very limited.

The papers say that welfare was paid for the child starting three years ago. I never even knew about this child!

If the enforcement agency isn't able to find you promptly, they can ask for back child support. In welfare cases, the court can order "reimbursement" to the county for welfare paid out to support the child UP TO THREE YEARS back from the date of filing of the complaint. The court will consider an obligor's earnings during that period when setting the arrears amount. It is no defense that an obligor did not know about the child. Example: An obligor earning \$2000/month for the past three years gets a notice of a child from a relationship that ended several years ago. After paternity is established, the court determines ongoing support of approximately \$390/month. Arrears for the period aid was paid (36 months at guideline support of \$390/month = \$14,040, which will accrue interest at the legal rate of 10% per year, or \$115/month.

This does not apply unless welfare is paid. In non-welfare cases, child support can only be ordered back to the date the child support motion was filed, after you are served.

I have a child support order against me. What if I don't pay?

If the obligor is in the military, once an order is established, the enforcing agency will send a wage withholding order to DFAS, and the support will come directly out of the service member's check. It is a violation of service regulations to fail to support dependents, and members may be subject to discipline for attempts to evade an obligation.

As a result of the 1997 Welfare Reform legislation, most states have similar child support enforcement tools. This information is specifically oriented to California, but is true in most states. Some of the tools available to collect child support are:

Wage withholding orders: Wage orders are directed at the employer and require that he or she deducts the support out of an obligor's check every pay period. A wage order is REQUIRED by law, unless payments are current and the

obligee agrees to not issue the order. Employers failing to honor a wage order can be prosecuted for contempt. Employers who deduct the support from an employee's checks, but fail to send in the money, can be charged with a crime.

New Hire Registry: Every time an employer hires a new person, he notifies the State of that person's identity. That list is compared to the list of people who owe child support. If no payment has been made in the last 30 days, the State notifies the employer to deduct 50% of the employee's net pay until a wage assignment order can be placed. (That's why when an obligor gets a new job, he should call or write to the agency enforcing the obligation immediately, so that a wage assignment or other arrangement can be placed.)

Passive Intercepts: On a regular basis, a computer list is submitted to the State and Federal governments by child support enforcement agencies, listing people who owe child support. That list is automatically compared to people due tax refunds, lottery winnings, state work contracts, Social Security payments, disability payments, unemployment benefits, bank accounts, financial institution records, etc.

License Suspension Every month, enforcement agencies send a list of people who are behind in their support payments to the State Department of Motor Vehicles. If an obligor's license is due to be renewed, and he or she is behind in support payments, they will receive a notice that in 150 days their license will be suspended until they get a clearance from the enforcing agency. The agency is allowed to take up to 90 days to issue or deny a release, so an obligor should not wait to go to the agency until the last minute. Most releases can be done on the same day or next day, once a wage assignment is confirmed. The warning notice is sent to the last address DMV has, so an obligor should always make sure that DMV has a current address. Other licenses are subject to suspension, including professional licenses (doctors, lawyers, nurses, etc.); business licenses (auto repair shops, barbers, security guards, etc.); and recreational licenses for hunting and fishing.

Civil Enforcement: A child support enforcement agency can file requests for examination of financial records, cite non-paying obligors for contempt of court, file writs of execution against property or money held or controlled by a child support obligor, can divide or seize certain pension assets, record liens against real property, order assets sold, and take other civil actions through the court to collect support. Contempt citations can result in jail time or community service for non-compliance with the court order.

Criminal Enforcement: Local agencies can file criminal charges against a parent who does not support their child. These charges can be misdemeanors or felonies, and can result in jail or prison time. If a non-paying parent is in another state, the US Attorney's Office can, in certain serious cases, file federal criminal charges against a parent.